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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/539,124	01/17/2006	Antonius Johannes Maria Bouman	BOUMAN1	8966

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EXAMINER	
GRAVINI, STEPHEN MICHAEL	

ART UNIT	PAPER NUMBER
3749	

DATE MAILED: 10/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/539,124	BOUMAN, ANTONIUS JOHANNES MARIA	
	Examiner	Art Unit	
	Stephen Gravini	3749	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on *17 January 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☐ Claim(s) *1-11* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☐ Claim(s) *1-11* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *20050616*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Preliminary matter

Examiner's immediate supervisor has instructed examination such that claims must not rely on imported description/specification in an internal Office electronic mail messages dated August 8, 2006 and August 2, 2006 to the examiner. Claims must contain all specification discussion as clarified by examiner's supervisor. Furthermore, language such as "for supplying," "for discharging," or "for removing" is to be interpreted as desired result and ordered examination such that the invention should be claimed as means or step plus function format, based on an internal Office electronic mail message dated July 10, 2006. The rejections to follow are based on mandated polices by examiner's immediate supervisor, with contact information at the end of this action.

Priority

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Examiner construes the claimed "atomization means," "filter means," and "collection means" as applicant's intention to invoke the sixth paragraph of 35 USC 112 because the "means for" language is not modified by functional language and not modified by sufficient structure, material or acts for achieving the specified function.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6, 8-9, and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Meade (US 4,657,767). Meade is considered to disclose the claimed invention comprising a vertical drying chamber **18** which comprises:

- a material feed **42** for supplying material which is to be spray-dried,
- an atomization means **24** for atomizing the material which is to be spray-dried,
- a drying-gas feed **32b** for supplying drying gas,
- a drying-gas discharge **35** for discharging drying gas,
- a material discharge **49** for discharging spray-dried material,
- filter means **61** for separating entrained fine particle out of discharged drying gas, and
- fine-particle removal means **53** for removing fine particles which have been deposited on the filter means from the filter means, wherein the spray-drying device also comprises fine-particle collection means for collecting the fine particles which have been removed from the filter means by the fine particle removal means, the collected fine particles hand spray dried material being separate products as discussed in column 3 line 25 through column 8 line 52. Meade is also considered to disclose the claimed separate drying chamber compartment as zone C, direct communication drying chamber compartment as shown in figure 5, at least two openings as shown in figure 6, two groups of openings at different height also shown in figure 5, bag filter or filter hose as shown in figure 4, fine particle treatment means as discussed in column 4 lines 20-

52, fine particle conveyor means as discussed in column 5 line 59 through column 6 line 48, and discharge opening leading to the drying chamber as shown in figure 5.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Meade in view of Rinfret et al. (US 3,228,838). Meade is considered to disclose the claimed invention, except for the claimed flow reversal. Rinfret, another spray-drying device, is considered to disclose flow reversal at column 9 line 57 through column 10 line 4. It would have been obvious to one skilled in the art to combine the teachings of Meade with the flow reversal, considered disclosed in Rinfret, for the purpose of efficient fine particle removal in a spraying device.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Meade in view of Rey et al. (US 4,883,507). Meade is considered to disclose the claimed

invention, except for the claimed perforated plate. Rey, another spray-drying device, is considered to disclose a perforated plate at column 12 lines 4-31. It would have been obvious to one skilled in the art to combine the teachings of Meade with the perforated plate, considered disclosed in Rey, for the purpose of more efficient spraying device through flow control.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-11 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 17-32 of copending Application No. 10/512,552. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious to one skilled in the art to claim the same invention as found in the copending application

but without an atomization means since both claimed structures function in the same way using the same means for the same result regardless of an atomization means.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen Gravini whose telephone number is 571 272 4875. The examiner can normally be reached on normal weekday business hours (east coast time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ehud Gartenberg can be reached on 571 272 4828. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Stephen Gravini

SMG
September 22, 2006